



ON - THE - JOB

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Labor Commission moves to extended government service schedule beginning August 2008

Utah Governor Jon Huntsman recently announced the 'Working 4 Utah' initiative, extending state government service hours from 7 a.m. to 6 p.m., Monday through Thursday beginning the first week of August. State administrative offices will be closed on Fridays but essential public services will remain open that already run on extended hours and during the weekends. The Utah Labor Commission is among those who will be closed on Fridays, but will observe the extended hours Monday through Thursday.

"As we go forward with this initiative, we will

conserve energy, save money, improve our air quality, and enhance customer service."

Governor Huntsman said. "We live in a dynamic, ever-changing environment, and it's crucial that we take a serious look at how we can adapt and maintain our state's unparalleled quality of life."

The 'Working 4 Utah' initiative will be critically evaluated following a one year period to allow for any necessary adjustments in the future. The

next month will be a time to allow state agencies to carefully plan and prepare for this monumental and exciting undertaking



Commission Approval of Workers Compensation Settlement and Commutation Agreements

Fundamental to the Workers Compensation Act is the proposition that employees who are injured at work should be provided a means to meet their basic needs—both to maintain their independence and dignity, and to prevent them from becoming a charge on society. Woven throughout the Workers Compensation Act are protections for the injured workers, including requirements for payment of disability compensation to replace lost wages, and payment for medical care necessary to treat their injuries.

Continued on page 3...

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Inside

Poster Contest Winners	⇒	2
Minimum Wage Increase	⇒	4
AMA Guides	⇒	4
Office of Coal Mine Safety		
New Director	⇒	5
Directors Win Awards	⇒	5
Utah OSHA Big 4	⇒	6
Appellate Decisions	⇒	6
Rules Corner	⇒	7

Central Davis Jr. High School bags top honors in 2008 Workplace Safety Poster Contest



Central Davis art teacher, Patti Hortin, is used to being on the winning end of the Labor Commission's poster contest, but even she was surprised to find herself accepting a check for the school which amounted to the largest win to date by any school in the contest's 11 year run! Central Davis was awarded \$1,600 as its share of the matching awards received by its winning students.

Sydney Letts, a 9th grade student at Central Davis won \$500 for having this year's grand prize winner. Janessa Cano was awarded \$300 for her 2nd

Runner-up poster and Luke Cutler got \$200 for the 3rd Runner-up. An Honorable Mention award of \$200 was also given to Sky Dodds.

Isa Hanswille from Olympus Jr. High School was the 1st Runner-up in the contest and also received a \$300 cash award.

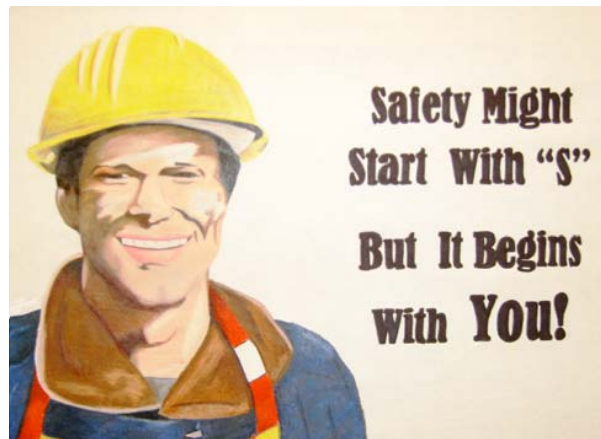
The poster contest, in its 11th year, is part of the Labor Commission's ongoing outreach campaign to "Take Safety Seriously". It is open to all middle and junior high schools across Utah, both private and public.

This year's winners were chosen from over 1,100 entries submitted by 36 different middle and junior high schools. Every school which enters the contest is given a \$300 participation award.

Because the workplace impacts all people and families in Utah, the Utah State Legislature appropriated funds

generated from a percentage of the workers' compensation premium to the Labor

Commission to be used in informing citizens of the need for workplace safety. As students in the junior high and middle schools participate in the technology/life/careers "TLC" project, it is important to incorporate workplace safety into this training by teaching and stressing safety.



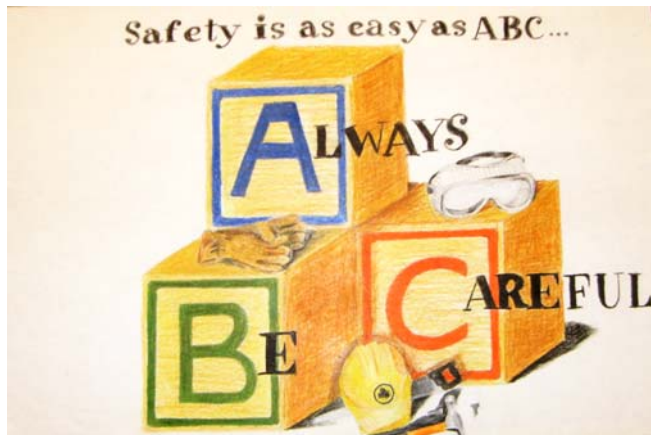
GRAND PRIZE WINNER
Workplace Safety Poster Contest 2008
Sydney Letts - Central Davis Jr. High School



1st RUNNER-UP
Workplace Safety Poster Contest 2008
Isa Hanswille - Olympus Jr. High School

This contest has generated great interest in workplace safety and those schools who have participated in the past have found it both rewarding and educational. The workplace safety posters can either be done through the art department, or integrated into the TLC curriculum serving as a motivational learning tool.

The other Honorable Mention award winners each received \$200 for them and their schools. They included: Rian Sheperd of Lakeridge Jr; McKinsee Hall of Kaysville Jr; Hunter Storey from North Ogden Jr.; Enrique Ortega and Lucero Sanchez from Northwest Middle School; Emily Roberts of Olympus Jr.; Spencer Penrod from Hillside Intermediate and Sky Dodds who attends Central Davis Jr. High.



2nd RUNNER-UP
Workplace Safety Poster Contest 2008
Janess Cano-Central Davis Jr. High School

These top 12 winners of the contest will have their entries featured in the Labor Commission's Workplace Safety calendar for 2009. The Commission distributes over 35,000 of the safety calendars throughout the state and it is considered a very effective tool for generating



3rd RUNNER-UP
Workplace Safety Poster Contest 2008
Luke Cutler - Central Davis Jr. High School

awareness to the public of the need for safety in the workplace.

Anyone interested in details of the contest for next year should contact Robyn Barkdull at the Labor Commission at (801) 530-6815 or by email at rbarkdull@utah.gov

Settlement and Commutation Agreements ...Cont. from page 1

There are two circumstances where the Workers Compensation Act permits the employer and employee to substitute a different method of payment for the disability and medical benefits that are required under the Act:

- **Commutation**—When there is no dispute as to the injured worker's right to receive workers compensation benefits, but the parties desire to substitute one kind of payment for another or to pay benefits in a manner different than the manner prescribed by the Act.
- **Settlement**—When the parties legitimately disagree as to the injured worker's right to receive benefits, but wish to "buy their peace" through a compromise settlement that allows both parties to avoid the risks and expenses of further litigation.

Commutation and settlement agreements are both subject to Commission approval. However, in light of their different natures and purposes, the Commission applies somewhat different standards in evaluating them. Consequently, when reviewing a proposed agreement, the Commission must first determine whether the agreement actually functions as a commutation or as a settlement. The Commission, through its Administrative Law Judges, will not approve a "settlement" of a workers' compensation claim if there is nothing of significance in actual dispute between the parties. Similarly, a commutation of benefits will not be approved if the parties make an insufficient showing of how each commuted benefit is calculated, with supporting documentation when necessary.

The Commission has a statutory duty to judge the propriety of every commutation or settlement of a workers' compensation claim. The Commission is committed to discharging that duty in a way that promotes the public policy and preserves the integrity of the workers' compensation system. The Administrative Law Judges' oversight and careful review of settlement and commutation proposals is critical to assuring that commutation and settlement agreements fulfill the underlying purposes of the Workers' Compensation Act.

Utah adopts second hike in federal minimum wage law

The Utah Labor Commission announced its intentions to adopt the new federal minimum wage law. The federal and Utah minimum wage rate was also increased last year for the first time in 10 years. In July of 2007, the rate went from \$5.15 an hour to the current rate of \$5.85. On July 24, 2008, the second of three 70 cent hikes will become effective raising Utah's minimum wage from \$5.85 to \$6.55 per hour.

"Utah statute requires the Labor Commission to review the state minimum wage law whenever a change occurs in the federal minimum wage law", said Commissioner Sherrie Hayashi. "Because of this mandate and the federal minimum wage law, the Commission promulgated changes to the Utah minimum wage rules through the state administrative rule-making process in 2007. Utah will continue following the pay scale set forth by the federal legislation as summarized in the chart below:

MINIMUM WAGE RATE INCREASES			
FEDERAL		UTAH	
Rate	Effective Date	Rate	Effective Date
\$5.85 / Hour	July 24, 2007	\$5.85 / Hour	Sept. 8, 2007
\$6.55 / Hour	July 24, 2008	\$6.55 / Hour	July 24, 2008
\$7.25 / Hour	July 24, 2009	\$7.25 / Hour	July 24, 2009

The new federal and Utah minimum wage laws leave unaffected the cash wage obligation of \$2.13 an hour that is owed to tipped employees and the training wage rate of \$4.25 an hour for minor employees during their first 90 days of employment with a single employer. A "tipped employee" is one who customarily and regularly receives tips, who is not a chef, janitor or dishwasher, and who receives at least \$30.00 a month in tips. The new Utah minimum wage rates will apply to a tipped employee's wages where the employer is permitted to credit the employee's tips toward the effective minimum wage rate after paying the employee the cash wage obligation of \$2.13 an hour. If the cash wage obligation, plus tips, falls short of the minimum wage level over a pay period, the employer must pay the difference.

Employers may choose to pay more than \$4.25 an hour to minor employees during their first 90 days of employment, but after the 90 days, minor employees are entitled to be paid wages at the new minimum wage rates.

Utah Labor Commission still references "Fifth Edition" not "Sixth Edition" of American Medical Association's Guides to Evaluation of Permanent Impairment.

The Utah Labor Commission does not accept the ratings of permanent impairments performed as published in the American Medical Association's Guides to the Evaluation of Permanent Impairment, 6th edition.

The Utah Labor Commission Administrative Rule R612-7-3 (Method for Rating) establishes the proper method for rating permanent impairment in Utah: 'For rating all impairments, which are not expressly listed in the Utah Code Annotated Section 34A-2-412, the Commission incorporates by reference "Utah's 2006 Impairment Guides" as published by the Commission for all injuries rated on or after July 11, 2006. For those conditions not found in "Utah's 2006 Impairment Guides," the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition" are to be used.

Commissioner names Director of Coal Mine Safety

Commissioner Sherrie Hayashi has named Garth J. Nielsen of Helper, Utah, as Director of the state's new Office of Coal Mine Safety (OCMS). The office was established at the recommendation of the Utah Mine Safety Commission which Governor Jon Huntsman appointed following the Crandall Canyon Mine Disaster where six mine workers and three rescue workers died. The OCMS exists to maximize coal mine safety, prevent coal mine accidents, and provide for effective coal mine accident response.



Mr. Nielsen has been involved in the mining industry for over 35 years, most recently as the Director of Mine Development at Interwest Mining. He has a strong commitment to mining safety and has great experience in both underground construction and ground control. As Director of OCMS, Mr. Nielsen will be responsible for monitoring mine safety conditions and coal mine certification/training and administer operations of the office on a day-to-day basis. He will act as Utah liaison with MSHA as well.

To contact the Office of Coal Mine Safety, please call the Toll-Free Number: 1-888-9UT-MINE (988-6463)

Directors win coveted Governor's Award for Excellence



Pete Hackford, Director of the Division of Boiler and Elevator Safety was awarded the 2008 Governor's Award for Excellence in the area of Leadership. Pete was recognized for exhibiting the highest standards of excellence, dedication and accomplishment in the operations of his Division. He has utilized technology to make the office more efficient and productive; his communication and support of his staff are exceptional; and he demonstrated outstanding public service by his work and dedication on behalf of the Labor Commission in contributing to the work of the Utah Mine Safety Commission convened in response to the Crandall Canyon mine accident.



Richard LaJeunesse, Presiding Administrative Law Judge, has been awarded the 2008 Governor's Award for Integrity. Judge LaJeunesse was recognized for his exemplary work demonstrated moral awareness, deliberation and character. Under his leadership, the Commission's Adjudication Division has become a model of fair, efficient and impartial dispute resolution for the state's employers, employees, industrial insurance carriers, and medical providers. The Division's fair, efficient and impartial adjudication system is the result of Judge LaJeunesse's belief that a fair and impartial system will not only benefit parties directly involved in litigation at the Commission, but all the citizens of the State of Utah.

Utah Occupational Safety & Health - Utah OSHA

Achieving compliance and providing assistance with safety and health in the workplace

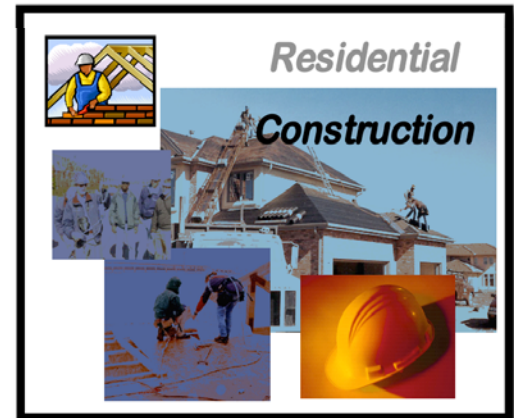
CONSTRUCTION INSPECTION EMPHASIS

Program Name: **THE BIG 4**

Scope: **RESIDENTIAL CONSTRUCTION SAFETY**

Duration: **From 06/01/08 to 09/30/08**

Location: **CONSTRUCTION JOB SITES STATEWIDE**



This Emphasis Program is called the Big 4 and is designed to help identify and eliminate safety hazards at residential construction job sites, associated with the four major leading causes of fatalities, accidents and injuries in the state of Utah:

1. Falls from elevations (e.g., floors, platforms, roofs).
2. Struck by (e.g., falling objects, vehicles).
3. Caught in/between (e.g., excavation/trench cave-ins, unguarded machinery, and equipment).
4. Electrical (e.g., overhead power lines, power tools, cords, outlets, temporary wiring).

Compliance Safety and Health Officers (CSHO's) will visit residential construction job sites to:

1. Determine if serious hazards or imminent danger situations are present. In those cases an opening conference will be conducted and the inspection process will begin, as prescribed by Section R614-1-7.G of the Utah Code.
2. Determine if an effective safety and health program has been implemented. If an effective safety and health plan is not in place, an opening conference will be conducted and the Big 4 inspection process will begin, as prescribed by Section R614-1-7.G of the Utah Code.
3. Determine if Citations and proposed penalties need to be issued for alleged serious violations found during the inspection, as prescribed by Utah Code R614-1-7.
4. Determine if no serious hazards or violations are observed and a safety program is in place. In those cases the CSHO will conduct only an on site assistance intervention.

UOSH remains committed to the safety and health of Utah's men and women working in the construction industry. By initiating this program UOSH is taking positive steps to maximize the protection of employees and eliminate workplace hazards at residential construction sites. For more information, visit <http://uosh.utah.gov/> or call Mr. Eldon Tryon, UOSH Compliance Manager at (801) 530- 6901.

Appellate Decisions

The Utah Court of Appeals recently issued three decisions in workers' compensation cases. These decisions are summarized below, but can be read in full at www.utcourts.gov/courts/appell/.

Rowsell v. Labor Commission, (2008 UT App 187, issued May 22, 2008). Mr. Rowsell, through his

attorney, sought workers' compensation benefits for a low-back injury allegedly caused by his work for either Coral Hills Motel or Red Cliffs Rehabilitation, or some combination of the two. The two employers each agreed to pay substantial sums to settle Mr. Rowsell's existing claims, with Mr. Rowsell's claim continued on page 7...

Appellate Decisions ...cont. from page 6

for future medical benefits to remain open against Red Cliffs. Mr. Rowsell's attorney's fee was computed on the **separate** amount of each payment from Coral Hills and Red Cliffs, resulting in a fee \$6,950 larger than if the fee had been computed on the **sum** of those payments. The Commission approved the parties' settlement but recomputed attorney's fee on the sum of the payments, thereby reducing the attorney's fee and increasing the amount to be paid to Mr. Rowsell. The Commission then dismissed Mr. Rowsell's claim against Coral Hills and Red Cliffs "with prejudice."

At the Utah Court of Appeals, Mr. Rowsell argued the Commission had overstepped its authority by reducing the attorney's fees. Mr. Rowsell also argued that, in light of the parties' agreement not to foreclose his future medical claims against Red Cliffs, the Commission had erred in dismissing his claim against Red Cliffs "with prejudice." The Court rejected both of these arguments. First, the Court observed that the Workers' Compensation Act vests the Commission with extensive authority to pass upon settlement proposals and to regulate attorney's fees. As to dismissal of Mr. Rowsell's claim against

Red Cliffs "with prejudice," the Court noted that the Commission had not precluded Mr. Rowsell from seeking future medical benefits, but had only terminated his ability to refile the same claims that had already been resolved by the parties' settlement agreements.

In both *Delaney v. Labor Commission, et al.*, (2008 UT App. 141; unpublished memorandum decision issued April 17, 2008) and *French v. Labor Commission, et al.*, (2008 UT App 260; unpublished memorandum decision issued July 3, 2008) the Court of Appeals declined to consider the merits of Ms. Delaney and Mr. French's respective challenges to the Commission's decisions. In *Delaney*, the Court observed that Ms. Delaney had either: 1) failed to preserve her arguments for appellate review; 2) inadequately briefed those arguments; or 3) failed to marshal the evidence in support of her arguments. In *French*, the Court summarily dismissed Mr. French's appeal because it raised issues that were irrelevant to the Commission's decision.

The Rules Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953



R600-2-1 Administration	Hours of operation. Changes the Labor Commission's business hours and days of operation to 7 a.m.-6 p.m., Monday through Thursday, in conformity with the Governor's "Work 4 Utah" initiative.	May be enacted as an emergency rule, effective August 1, with regular rule-making to follow.
R602-2-4 Adjudication	Procedures for Termination of TTD. Implements Sub. H.B. 384, effective July 1, 2008, which requires the Commission to accept and adjudicate employer/insurance company requests to terminate or reduce temporary disability compensation payments in cases of alleged employee misconduct.	Effective July 1, 2008 as an emergency rule; the Commission will now proceed with regular rule-making.
R610-4 Antidiscrimination and Labor	Employment Agencies. Repeals Commission regulations for employment agencies in light of legislative repeal of the statute authorizing such regulation.	Effective July 8, 2008.
R610-1-4 Antidiscrimination & Labor	Minimum Wage. Clarifies application of minimum wage requirements to tipped employees. Also addresses tip-pooling arrangements.	June 13, 2008

continued on page 8...

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Rules... cont. from page 7

R612-11 Industrial Accidents	Penalty for employers who directly pay workers' compensation benefits. Establishes procedural standards to implement S.B. 58, which penalizes employers who repeatedly fail to report workplace injuries to their insurance carriers and, instead, pay benefits directly to the injured worker.	Approved by Advisory Council and published in <i>Utah Bulletin</i> ; may be made effective Aug. 7, 2008.
R612-12 Industrial Accidents	Coverage Waivers. Sets frequency of reports required from insurance carriers for reporting issuance of workers' compensation coverage waivers as permitted by S.B. 159.	Approved by Advisory Council and published in <i>Utah Bulletin</i> ; may be effective Aug. 7, 2008.
R612-2-5 Industrial Accidents	Regulation of Medical Fees. Increases some conversion factors under the Commission's Medical Fee Guidelines for medical care rendered for a work-related injury or illness.	July 1, 2008

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- ☐ Please correct my name/address on your mailing list. I am currently receiving your quarterly newsletter.
- ☐ Please send the newsletter by email

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